Guidance for Processing Applications for Solar Power Generation Facilities on Bureau of Land Management Administered Public Lands in the California Desert District

A. Purpose: Instruction Memorandum (IM) No. 2007-97, Solar Energy Development Policy, establishes Bureau of Land Management (BLM) policy for processing right-of-way applications for solar power generation projects on public lands administered by the BLM. Commercial concentrating solar power (CSP) or photovoltaic (PV) electric generating facilities must comply with the BLM's planning, environmental and right-of-way application requirements, as do other commercial uses. The BLM's renewable energy program, including the solar energy program, has grown significantly in the past two years at: http://www.blm.gov/wo/st/en/prog/energy/solar_energy.html

This guidance is intended to supplement IM No. 2007-97 with more detailed information developed from "lessons learned" as we began to implement the IM at the field level on site-specific projects. This guidance provides more detailed information developed from "lessons learned" as we began to implement the IM at the field level on site-specific projects with more detailed information developed from "lessons learned" as we began to implement the IM at the field level on site-specific projects.

In southern California during Fiscal Year 2007, BLM Field Offices in the California Desert District (CDD) received a large number of applications for solar power generation on public lands. As a result, the CDD established a Renewable Energy Team to coordinate a consistent approach to processing the applications. The Renewable Energy Team first met in April 2007 just as Washington Office Instruction Memorandum (IM) No. 2007-97 was issued (April 4, 2007). The guidance in this document is intended to supplement IM 2007-097.

Right-of-way applications for solar energy development projects will be identified as a high priority District and Field Office workload and will be processed in a timely manner. This priority is consistent with the President's National Energy Policy of 2001 and the Energy Policy Act of 2005. Adequate resources should be provided to review and process the application. BLM will apply sound business practices in expediting the application process.

B. Applications: Applications for commercial solar energy generation facilities, both PV and CSP, will be processed as right-of-way authorizations under Title V of the FLPMA and Title 43, Part 2804 of the Code of Federal Regulations (CFR). Applications are filed using the standard right-of-way application form (SF-299).

C. Right-of-Way Grants: The requirements for submittal of a Plan of Development with the right-of-way application for the solar energy development facilities are addressed at 43 CFR 2804.25, as well as any additional requirements submitted in writing by the Authorized Officer. A pre-application meeting is strongly recommended to clarify these requirements. The California Energy Commission (CEC) is responsible for solar energy applications for CSP

projects. It may be helpful to involve CEC staff in pre-application meetings and to be involved in pre-application meetings held between the applicant and CEC. For other types of renewable energy projects, e.g., photovoltaic projects (PV), it may be helpful to involve other State/local entities in pre-application meetings.

A right-of-way grant (Form 2800-14) will be used to authorize all commercial solar power generation facilities on public lands. This authorization will include the solar collectors, tower, turbine generators, fossil fired generator for hybrid systems, thermal storage, administration building(s), wells, access roads, electrical and transmission facilities to connect to the grid, and other testing and support facilities. It is critical that each component of the project on public lands be authorized under a right-of-way grant and that BLM's authorization identifies a responsible party for the grant. For example, when a project has more than one power generation unit (sometimes referred to as a Solar Energy Generation unit or SEG), separate right-of-way grants may be issued for each unit, each under a separate right-of-way application. An analysis of multiple SEGs should be completed in one environmental document (generally an EIS). The shared facilities, such as an administration building that may be used by all individual units in the project area must be authorized under a right-of-way grant to a single corporate entity. This approach facilitates BLM's oversight and management of the right-of-way grant(s) for an operating power generation facility.

Other off-site facilities, such as electrical transmission lines to connect to the grid, a substation, gas pipeline, water pipelines, and off-site access roads must be included in the application and may require separate linear right-of-way authorizations. The extent to which any facilities are analyzed in the same environmental report document will depend on relevant factors, including the degree to which they are ancillary only to the proposed project, timing of their design and construction, and the anticipated holder of the right-of-way for the ancillary facilities. All reasonably foreseeable related facilities must be analyzed in the cumulative impact analyses even if they are not sufficiently identified in detail at the time the cumulative impact analysis is prepared. This may require the development of a reasonably foreseeable development scenario on which to base a cumulative impact analysis.

D. Application Fees: All solar energy right-of-way applications and authorizations are subject to appropriate cost recovery fees (processing and monitoring) and rental fees as required by 43 CFR 2804.14, 43 CFR 2805.16, and 43 CFR 2806.10. It is anticipated that most right-of-way applications for solar energy development will be Category 6, full cost recovery applications.

E. Applicant Qualifications: The BLM will discourage applicants from applying for or holding right-of-way authorizations for purposes of speculating, controlling, or hindering development of solar energy on public lands. There is an important difference between applications that are filed for speculation purposes and applications that are filed with the full intent to develop the property to construct renewable energy generation facilities. Speculation

by applicants can be reduced by ensuring that an applicant meets qualification requirements in the regulations (43 CFR 2803.10[a-c].

The regulations clearly provide authority to require that the application include information on the applicant's technical and financial capability to construct, operate, maintain and terminate the solar energy facilities (43 CFR 2803.10(b)). This technical capability can be demonstrated by obtaining the funding, designing, constructing or successfully operating a solar energy generating project. Actual ownership, development, or successful management of similar-sized electric energy facilities within the last 5 years by the applicant would generally constitute evidence of financial capability.

The regulations provide the authority to deny the application if the applicant cannot demonstrate adequate technical ability to construct, operate, and maintain the solar energy facilities (43 CFR 2804.26(a)(5)). The BLM may also deny an application if the applicant does not provide, in a timely manner, additional information requested by BLM to process an application or the cost recovery funds required by 43 CFR 2804.14.

F. Cost Recovery: When an application for a solar power generation facility is filed, BLM must determine the completeness of the application. In addition, before requesting cost recovery, BLM must make a preliminary determination that the proposed project would be in conformance with the applicable land use plan. For example, most solar projects involve a substantial amount of surface disturbance. If a project is proposed to be located in a sensitive area, such as where there is a 1% surface disturbance limitation (as in a DWMA or in the Mohave ground squirrel Habitat Conservation Area) the project may not be in conformance with the land use plan. Solar power generation facilities will generally be a Category 6 cost-recovery project. Generally, when an application for a right-of-way application for a solar power generation facility is filed with BLM, a letter can be sent to the applicant with this Category determination and to set up a Cost Recovery Agreement (CRA). At the same time, BLM may request an initial cost recovery account deposit to set up a cost-recovery account. BLM may request an initial cost recovery deposit of $50,000, or may provide a more detailed estimate of BLM's costs. The letter should request the initial deposit within 30 days. The deposit into a cost recovery account will provide BLM with the funds needed to assist the Applicant in completing the Plan of Development (POD) to cover all the requirements in the POD template.

A Memorandum of Understanding (MOU) must be developed to set up a cost recovery account in BLM's financial management system. The MOU should include provisions for the U.S. Fish and Wildlife Service to work through BLM to fund their costs associated with ensuring that applicants conduct appropriate biological surveys and to prepare a Biological Opinion for the project.

G. Size of Project Area: The lands involved in the right-of-way grant will be defined by aliquot legal land descriptions and be configured to minimize the amount of land involved. Often applicants include a larger acreage in their application than they will need to construct a project of the size and generation capacity they propose. This provides flexibility to adjust the site-specific location of the physical facilities. When a right-of-way is approved by BLM, it

should be approved for an area large enough for the physical facilities and any additional secure area needed as an integral part of the project. The applicant must be advised of this guideline. When BLM requests an appraisal, it should be for an area large enough to cover the project area for which a right-of-way is being considered (the ultimate project footprint for which the right-of-way would be granted), not for the larger area included in the initial application. This larger area should be narrowed down to the smaller area actually required by the project and for which the right-of-way would be granted. Pre-application meetings and resource surveys may help to reduce the project area before any required environmental document is started. Then the applicant should be encouraged to drop out the additional area from their application. Often, phased resource surveys can help to accomplish this mutually beneficial objective. Phased surveys are an excellent example of how this can serve to help the applicant and BLM reduce the project area in the application.

H. Due Diligence: Two important steps in the process include requirements for due diligence on the part of the applicant: (1) completion and submission of all information required by BLM, including the Plan of Development (POD); and construction and operation of the facility after a right-of-way is granted. The due diligence provisions in the right-of-way authorization for solar energy development should be considered as requirements in the application and construction process.

Plan of Development: A template for a solar energy Plan of Development has been prepared for use Bureauwide. It will be provided to applicants for solar energy projects. Will be provided directly to applicants and is available on the California Desert District web site for Alternative Energy, as well as other BLM web sites.

BLM will advise applicants of additional information needed by BLM to fully process the application and provide the applicant with a reasonable period of time to comply with the request and inform them of the possibility that BLM could terminate the process and close the case file. If the applicant does not comply with the request, BLM may consider closing the case file and returning funds remaining in the cost recovery account. It is important that the applicant understand the consequences of their lack of response before BLM takes action to close the case file.

The solar energy right-of-way applicant will be requested by letter to provide within 90 days a complete POD consistent with the POD requirements. If the applicant has not responded within 90 days, or if the applicant has responded and the information provided is not sufficient, the BLM will send a second letter of request with a 60-day response. For those applicants that have already provided a POD, but need to submit additional information to meet the requirements of the new POD template, the BLM will send the 60-day letter. A final 30-day show cause letter will be provided to the applicant prior to issuing any decision to reject the application for failure to respond pursuant to the regulations (43 CFR 2804.25(b) and 2804.26(a)(6)). During the NEPA review process additional information may be requested of the applicant. Reasonable periods of time should be provided to the applicant to respond to these requests for additional information.

The completion of biological and cultural resource may extend an otherwise shorter deadline. Biological surveys are often most appropriately conducted during certain seasons. Since this information is needed for the environmental analysis, the time period to submit this information may be extended.

Construction and Power Production: The following due diligence requirement needs to be included in the terms and conditions for the right-of-way grant for each individual project.

> *"If construction of solar energy facilities has not commenced within 3 years after the effective date of the grant, the right-of-way holder shall provide the BLM good cause as to the nature of any delay, evidence of progress toward beginning construction, and the anticipated date of start-up operations. Failure of the holder to comply with the due diligence provisions of the solar energy development right-of-way grant provides the authorized officer the authority to terminate the authorization (43 CFR 2807.17)."*

I. Coordination with State and Local Agencies: The BLM will cooperate with State and local agencies responsible for authorizing solar energy power generation facilities to prepare joint documents to comply with the National Environmental Policy Act of 1969 (NEPA and the California Environmental Quality Act (CEQA) so that there is only one document and one public involvement process. For example, the Department of the Interior, BLM, California Desert District, signed a "Memorandum of Understanding Between the U.S. Department of the Interior, Bureau of Land Management, California Desert District with the California Energy Commission Staff Concerning Joint Environmental Review for Solar Thermal Power Plant Projects." The California Energy Commission (CEC) is the lead State agency for compliance with CEQA for solar thermal power plants, e.g., solar trough, power tower, and Stirling engine technologies at: http://www.energy.ca.gov/siting/solar/index.html. The MOU between BLM and CEC is available at:
http://www.blm.gov/style/medialib/blm/ca/pdf/cdd/energy.Par.56700.File.dat/BLM_CEC_MOU.pdf

BLM will cooperate with other appropriate agencies, as lead State agencies for compliance with CEQA for projects involving other solar power generation technologies, e.g., photovoltaic and for projects involving transmission system infrastructure. The various counties may play this critical role so there will be only one NEPA/CEQA process for an individual project.

J. Competitive Interest: Right-of-way applications for solar energy development will generally be accepted and processed on a first-come, first-serve basis. The right-of-way regulations (43 CFR 2804.23(c)) provide authority for offering public lands under competitive bidding procedures for solar energy right-of-way authorizations. The BLM will initiate a competitive process if a land use planning decision has specifically identified an area for competitive leasing. The BLM may also consider other public interest and technical factors in determining whether to offer lands for competitive leasing. Competitive bidding will follow the procedures required by 43 CFR 2804.23(c).

K. Plan Amendment: An amendment to the California Desert Conservation Area (CDCA) Plan (1980) is required for all power generation facilities (page 119). *"Sites associated with power generation or transmission not identified in the Plan will be considered through the Plan Amendment process."* The planning regulations at 43 CFR 1600 must be followed. Approval of the proposed plan amendment for a solar energy generation facility is by the California State Director. The planning regulations include an opportunity for protest (43 CFR 1610.5-2). Due to the amount of surface disturbance involved, a right-of-way for a solar power generation facility effectively precludes other uses of the lands and resources subject to the right-of-way for at least the term of the right-of-way and may extend to the time needed to reclaim the lands disturbed. In the California Desert Conservation Area (CDCA), the Multiple Use Class (MUC) of the area would be changed from what its existing MUC Class L (Limited) to MUC Class I (Intensive).

L. Transmission Infrastructure: Generally, when BLM analyzes an electric power generation facility, the new electric power transmission system associated with the facility is also analyzed so that a decision on any necessary right-of-way can be incorporated into the Record of Decision (ROD) on the power generation facility and a right-of-way could be granted. To the extent practical, that should be the approach with alternative energy power generation facilities in the California Desert District, i.e., all electric power transmission infrastructure associated with the proposed power generation facility to the point of its connection with the power transmission grid should be analyzed in the same environmental document as the proposed power generation facility.

Southern California is in a unique position where numerous power generation facilities are proposed on public and private lands across all of southern California. As the electricity from these facilities is added to the grid, there will be a need to upgrade existing transmission lines and to add new transmission lines. These types of upgrades will be difficult to attribute directly to any single power generation facility and may, in fact, not be completely known at the time a particular power generation facility (whether on public or private lands) is approved. Therefore, these upgrades may not be "ripe" for analysis at the time an environmental document on an individual facility is prepared. These upgrades may be more appropriate to analyze when potential applicants for the transmission system complete their plans for upgrading the electric transmission system across broader areas that cover their service area. The California Independent System Operator (Cal ISO) will generally have a role to play in this process as each power generating project completes their facility impact study and other studies in the Cal ISO process. California Public Utilities Commission may also be involved, sometimes as a State lead for compliance with the California Environmental Quality Act (CEQA), in cooperation with the BLM or the Forest Service as federal lead for compliance with the National Environmental Policy Act of 1969 (NEPA). However, reasonably foreseeable impacts associated with transmission system upgrades, for an individual project, that are identified by Cal ISO or the utility operating the grid into which the project will tie must be analyzed in the cumulative impact analysis for each individual project. This does not mean that the level of analysis would need to be sufficiently detailed to grant a right-of-way to the transmission system operator but it should be sufficient to analyze the

impacts reasonably foreseeable upgrades to the transmission system as part of cumulative impacts.

Transmission grid operators engage in long-term planning for upgrading the portions of the electric utility grid under their control. They base their long-term plans on load growth projections and consider the California Renewable Energy Transmission Initiative (RETI) - http://www.energy.ca.gov/reti/index.html and the State's emphasis on increasing the renewable energy production for utility companies in the State. These forecasts and long-term plans may help to form the basis for a reasonably foreseeable development scenario for new renewable energy projects to factor into the cumulative impact analysis in environmental documents for individual projects.

M. Term: The term length of the authorization is not limited by regulation; however, it should recognize the overall costs and useful life of solar energy facilities (43 CFR 2805.10(a)(3)). The term of the solar energy authorization for a commercial facility should not exceed the design life of the project, typically 30 years. The authorization may be renewed consistent with the provisions of the regulations (43 CFR 2807.22)

N. Rental: The policy guidance on rental fees contained in Instruction Memorandum (IM) No 2007-97 states that the rental will be based on an appraisal that should consider the value of the rights to be conveyed and the lease of comparable lands in an early or similar stage of potential development, e.g., commercial land or industrial land, as of the date of the appraisal. The procured appraisal and review report will be prepared on a site-specific basis and will reflect market conditions for setting rental payments**.** Since the rental payment reflects the full use of the public land for solar facilities, similar to a lease for industrial purposes, there are no additional royalty payments for electric power generation. Solar energy right-of-way authorizations are considered non-linear right-of-way grants and, therefore, are not subject to the requirements of 43 CFR 2806.23 regarding multi-year rental payments. Rental payments will be made on an annual basis.

The request for appraisal to estimate annual rental should also include a request to identify an appropriate rental index for updating the rental payment. The justification for the index should reflect normal market conditions for updating rental payments on similarly used land.

The rental payment will be phased in after approval of the grant by BLM. During this period, the applicant can finalize details of the POD and order materials. The finalized POD will be used by BLM to provide the applicant with a Notice to Proceed with construction. The rental payment will be phased in over a 3-year period from approval of the right-of-way grant. This will permit time for the applicant to complete the final engineering plans for the project and to gather any additional data that may be required. The rent for the first year will be 25 percent of the BLM approved rent, 50 percent the second year, and 100 percent the third year.

All solar energy right-of-way authorizations are subject to rent in accordance with applicable Bureau guidance, unless they are specifically exempt from rent by statute or regulation. Some

holders or facilities may be exempt from rent pursuant to the Rural Electrification Act of 1936, as amended (43 CFR 2806.14(d)).

O. Appeals and Protests: All final decisions issued by the Authorized Officer in connection with the authorization of solar energy projects are subject to appeal under 43 CFR part 4 (43 CFR 2801.10). It should also be noted that right-of-way grants are issued as full force and effect decisions (43 CFR 2801.10[b]) and will remain effective during any appeal period, unless stayed by the Interior Board of Land Appeals (IBLA).

Since the decision on an alternative energy power generation project requires an amendment to the California Desert Conservation Area (CDCA) Plan, the protest procedures pursuant to BLM's planning regulations (43 CFR 1610.5-2) apply to the decision. The 60-day Governor's consistency review provisions of the planning regulations are also applicable (43 CFR 1610.3-2[e]).

The appeal/protest process occurs after the filing of a Final EIS, including any joint document prepared in cooperation with another agency, e.g., the California Energy Commission (CEC). After the Final EIS is filed, there would be no joint process between BLM and CEC because the agencies' decision process from that point would be unique to each agency, including timeframes (e.g., for BLM's protest and appeals processes).

P. Bonds and Reclamation: A bond will be required for solar energy development right-of-way grants to ensure compliance with the terms and conditions of the authorization and the requirements of the regulations, including reclamation. The reclamation provisions within the POD should include not only removal of solar collectors and other structures, but also the reclamation of access roads and disturbed areas. The amount of the bond will consider potential reclamation and administrative costs to the BLM and should include an inflation factor based on the anticipated life of the facility.

Q. Construction and Compliance: BLM will use the final form of the POD as a basis for monitoring construction and for compliance. In California, The CEC also has compliance responsibilities associated with construction of concentrating solar power facilities. Field Offices should coordinate compliance efforts with the CEC. BLM may conduct compliance efforts using BLM staff, paid for under cost-recovery, or BLM may use contract personnel to carry out these responsibilities. If contract personnel are used, BLM may issue a contract under BLM appropriate contracting authority or BLM may cooperate with the applicant to hire an independent consulting firm to oversee construction and compliance with the Terms and Conditions of the right-of-way grant. If this latter option is used, BLM must be in full control over the substantive aspects of compliance with the terms and conditions of the right-of-way grant. At a minimum, a routine submission of compliance reports from an independent contractor hired by the right-of-way holder should be required. BLM must make a sufficient number of field visits during construction to ensure that BLM's independent oversight can be demonstrated.

R. Assignment: The right-of-way grant may be assigned consistent with the provisions of the regulations (43 CFR 2807.21(b)). However, all assignments shall be approved by the BLM authorized officer. The qualifications of all assignees must comply with 43 CFR 2803.10 and the Due Diligence section of this guidance and other Bureau policy and guidance, as well as with the requirements of the regulations (43 CFR 2807.21(c)(1) and 43 CFR 2807.21(d)). The assignment shall not interfere with the BLM's enforcement of the terms and conditions of the authorization or management of the associated public lands.

S. Solar Energy Testing: When an applicant for a solar energy development project also requests authorization to place facilities to conduct tests of the solar energy resource, such authorizations should be handled as separate authorizations for the site testing. Short-term permits under 43 CFR 2920 should be used. This would minimize the scope of the authorization and could often be handled using a categorical exclusion under NEPA. This is an appropriate time to initiate consultation with Native American tribes on the solar testing phase and on the overall project, as part of government to government responsibility, as well as to satisfy the requirements of Section 106 of NHPA and other laws and regulations. The list of Tribes consulted should be as broad as necessary an should include the Tribes BLM consults for the area, as well as Tribes suggested by any cooperating agencies, e.g., the CEC, California Public Utilities Commission), county, etc. A decision to approve solar energy testing will not make any commitment relative to the applicant's proposal for development and will not relieve the applicant of due diligence requirements associated with solar energy development proposals. Surveys to comply with Section 106 of the National Historic Preservation Act and the Endangered Species Act would be limited to those directly related to the facilities permitted to conduct the solar testing.

T. Communication and Public Participation

1) Communication Plan - A Communication Plan for Solar Energy Development in the California Desert District was completed. It is posted on the California Desert District's Alternative Energy web site at http://www.blm.gov/ca/st/en/fo/cdd/alternative_energy.html

2) Web Site - The California Desert District web site includes maps and tables for solar energy and wind energy applications. It also includes BLM guidance, Memoranda of Understanding, and links to California Energy Commission web sites which contain information in energy projects on which BLM and CEC will cooperate in preparing documents to support the decisionmaking process on each project. The status of projects listed on the web site will be updated at least quarterly.

3) California Desert Advisory Council (DAC) - The DAC expressed a continuing interest in alternative energy projects and the potential conflicts with other resources and public land users. The council will be periodically updated on the status of projects and interagency coordination efforts through regularly scheduled DAC meetings which are open to the public, as well as through electronic correspondence, as needed.

4) Public involvement - When there is a need to provide general public notification, e.g., during the public participation process on an individual project, news releases and public notices will be utilized. The public notice requirements associated with the NEPA process will be followed, including publications in the Federal Register of an individual project Notice of Intent (NOI) and Notice of Availability (NOA). Under the CDCA plan, a plan amendment is required for alternative energy projects. During the process of preparing an NOI for publication, and before the NOI is forwarded beyond the Bureau, a briefing should be scheduled with the District Manager and the State Director. This will help to ensure that the proposed right-of-way and plan amendment are properly integrated into a single environmental document that meets all the necessary requirements. The briefing will also serve to ensure consistency across the State in environmental documents, NOIs and NOAs, and public involvement processes. For example, the plan amendment must be approved before the right-of-way can be offered to the applicant.

When a proposed project employs a concentrating solar power (CSP) system, the Memorandum of Understanding between the BLM and the California Energy Commission (CEC) provides that BLM will cooperate with the CEC on the public involvement process and will incorporate BLM requirements into CEC public involvement process. BLM does not publish a NOI until an applicant files an Application for Certification (AFC) with the CEC and it is accepted by the Commission. A draft NOI should be prepared early and sent through the Bureau/Department approval process prior to that time so the NOI can be filed as soon as the AFC is accepted by the Commission. BLM Notices of Intent (NOI) and Notices of

Availability (NOA) should be posted on the California Desert District alternative energy web site soon after the notice has been published in the Federal Register.

U. Specific Resource Concerns

1) Cultural Resources: BLM will complete its responsibilities to identify and take into account effects to historic properties that may be affected by proposed energy projects pursuant to Section 106 of the National Historic Preservation Act (NHPA). Depending on the scale, complexity, and issues of a specific energy proposal, BLM may comply with Section 106 by either utilizing the provisions of the BLM Protocol or by following the procedures provided in 36 CFR § 800 (Protection of Historic Properties). BLM has developed a supplement to the BLM Protocol that provides specific guidance the review of applications involving large land areas. For projects involving the California Energy Commission (CEC) review and approval, the integration of CEC data adequacy requirements will be achieved according to the terms of the MOU between the CEC and BLM. BLM will involve CEC cultural staff in meetings with the applicant to insure that both BLM and CEC data adequacy requirements are clearly presented to the Applicant. The BLM strategy for managing the Section 106 review of energy projects, which require large land areas, may follow differing strategies depending on the nature of the proposal, but will generally incorporate the following guidelines and requirements:

a. BLM Class I Literature Review

1. For all projects, a BLM Class I literature review will be submitted for the entire lands initially proposed in the application, regardless of the eventual size of the proposed undertaking. It is assumed that the Class I literature review will be utilized as part of the screening strategy to eliminate lands and reduce the size of the actual acreage needed to arrive at a "core" area that will likely become the area for the proposed Plan of Development (POD) and on which the right-of-way would be granted. This will define the Area of Potential Effect (APE) for review under Section 106. Applicants and their consultants should work with BLM to make sure that the Class I literature takes into account the available information in not only the California Historic Resources Information System, but also information that BLM may have for these areas.

2. As part of the BLM Class I literature review, applicants will be expected to work with BLM to identify and contact Native American tribes and other consulting parties that may have information on historic properties, sacred sites, traditional cultural properties, or other cultural resources that may be located within the APE or may be affected by the proposed undertaking. At the time of acceptance of a complete application, BLM will be responsible for identifying tribes and other consulting parties that may have an interest in the project area, notifying the tribes of the project, and

formally consulting with the tribes pursuant to agency responsibilities under 36 CFR § 800.2(c)(B)(ii) and the *Executive Memorandum of April 29 1994* (FR Doc. 94-10877). The applicant and their consultants may assist BLM in completing these responsibilities, but it must be emphasized that BLM has sole authority and responsibility to conduct consultation with Tribal governments. It is essential that aggressive and meaningful tribal consultation be carried out early in the application process to identify issues and concerns that may rise above and beyond specific archaeological or historic properties, which may involve sacred sites, traditional cultural landscapes or other issues. This consultation would help identify resources that would not normally be identified during archaeological survey.

b. BLM Class II Survey and Inventory

1. For proposed projects for which a large initial project area has been identified, within which a smaller POD will eventually be submitted, the Applicant may propose to conduct a BLM Class II (sampling) survey for the purpose of identifying sensitive archaeological or cultural areas as part of a strategy to eliminate areas of archaeological or cultural concern and to develop a site plan that will eliminate or minimize effects to historic properties. Provision for completing a Class II survey is consistent with 36 CFR § 800.4(b)(2) which allows for the phased identification and evaluation of historic properties where large land areas are involved. The decision to conduct a Class II survey is at the discretion of the Applicant and is not required, although BLM would encourage Applicants to consider the value of utilizing a Class II survey, in addition to the Class I literature review, to assist in the identification, screening and/or elimination of sensitive archaeological and cultural areas from the eventual APE. BLM will generally be supportive of any Class II strategy that the Applicant wishes to employ to assist in the identification of sensitive areas and the screening and elimination of lands that may contain sensitive resources or potentially sensitive cultural issues. When the Applicant has identified a "core" area that will become the area for which the POD is likely to encompass, those lands will be surveyed in accordance with BLM Class III guidelines and must also meet data adequacy requirements of the CEC.

c. BLM Class III Survey and Inventory

1. For all projects for which a specific or "core" project area has been identified and a Plan of Development (POD) submitted, the entire project area incorporated within the project footprint and any buffer areas will be surveyed at the BLM Class III inventory level.

d. Coordination and Reporting

1. BLM established a general process, with the CEC, for coordination on cultural resources requirements to meet the needs of both agencies. The purpose of this process is provide Applicants clear and consistent guidelines regarding data needs and data adequacy and to help the Applicant move through the process in an efficient and cost effective manner. At the onset of the proposed project, BLM and CEC will provide the Applicant guidance regarding conditions and stipulations for fieldwork, reporting requirements, and other expectations, as well as answer any questions the Applicant may have regarding process. Where the CEC is not involved, BLM will follow these same general procedures for consistency and work closely with the appropriate State or County agency, or investor owned utility to ensure that the requirements of NEPA, CEQA, and the NHPA are being met.

2. In all cases, BLM authorizes field survey activities on public lands and is responsible for compliance with Section 106. All reports must be submitted and approved by BLM prior to submittal to outside agencies unless otherwise agreed to by BLM. BLM letters initiating consultation with the State Historic Preservation Officer (SHPO) should be posted on the California Desert District alternative (renewable) energy web site soon after the letter is sent to SHPO.

2) Native American Consultation: Consultation with appropriate Tribes will be required for each project. On September 6, 2007, the California Desert District sent a "General Notice Regarding Proposed Alternative Renewable Energy Developments Located on Public Lands in the California Desert District, Bureau of Land Management" to Native American Tribes in California, Nevada, and Arizona that have traditionally expressed an interest or are ethnographically documented to have ties to the California desert area. This general notice was sent as an early notification to Native American Tribes to provide an idea of the nature and scope of proposed energy developments in the California Desert as well as to prepare them for the fact that Applicants and their consultants would be contacting them for information on proposed project areas. The notice includes maps of proposed solar energy and wind energy projects, as well as tables listing each active application to show the applicant and project location, as well as other details about the application. This notice was not intended to initiate Native American Consultation on each individual solar or wind energy development project.

At the time of acceptance of a complete application, BLM will be responsible for identifying tribes that may have an interest in the project area, notifying the tribes of the project, and formally consulting with the tribes pursuant to agency responsibilities under 36 CFR § 800.2(c)(B)(ii) and the *Executive Memorandum of April 29 1994* (FR Doc. 94-10877). The applicant and their consultants may assist BLM in completing these responsibilities, but it must be emphasized that BLM has sole authority and responsibility to conduct consultation with Tribal governments. It is essential that aggressive and meaningful tribal consultation be

carried out early in the application process to identify issues and concerns that may rise above and beyond specific archaeological or historic properties, which may involve sacred sites, traditional cultural landscapes or other issues. This consultation would help identify resources that would not normally be identified during archaeological survey. Native American consultation should begin as soon as possible after the acceptance of a completed application, and should also cover associated permits and separate environmental reviews related to authorizations to conduct early evaluation procedures, e.g., solar energy testing, geotechnical testing, well or other borings, etc.

General Native American notification and consultation letters sent to Tribes on individual proposed projects should be posted on the California Desert District alternative energy web page soon after the letters are signed. However, BLM correspondence sent to the Tribes, SHPO, the Advisory Council on Historic Preservation, or other interested parties, which contain information about specific archaeological resources or similar sensitive issues **will not** be posted or made available to the public without appropriate review. Correspondence received from the Tribes or other interested persons will not be posted on the Web Site.

3) Threatened and Endangered Species:

The BLM developed a Memorandum of Understanding with the U.S. Fish and Wildlife Service (FWS). This consultation agreement forms the basis for initiating and conducting formal consultation under the Endangered Species Act (as amended) on individual renewable energy projects. To assist FWS in completing consultations in a time frame to meet the joint schedule of the BLM and the CEC, the MOU calls for BLM and FWS to establish a mechanism to transfer funds gathered under cost recovery (by BLM) for each of the renewable energy projects to FWS. Costs would be tracked by FWS on a project-by-project basis. FWS estimated the cost for FWS work on these projects to be $67,000 per project. Unused funds would be refunded to the applicant. BLM would include the estimate to cover FWS work in the cost recovery estimate that BLM provides to each applicant.

The BLM will consult with the FWS on each alternative energy project. Biological Survey protocols will be established, in consultation with FWS so that applicants can submit "data adequate" biological information when they submit an Application for Certification (AFC) to the California Energy Commission. The same protocols and agency coordination will apply to photovoltaic projects reviewed by BLM and the local government agency. Projects that may affect threatened or endangered species or their critical habitat will require consultation under Section 7 of the Endangered Species Act. Cost recovery fees for the FWS review will be collected by BLM under its consultation agreement with FWS. This Memorandum of Understanding (MOU) is posted on the BLM California Desert District alternative (renewable) energy web site: http://www.blm.gov/ca/st/en/fo/cdd/alternative_energy.html

Bioregional land use plan amendments to the California Desert Conservation Area (CDCA) Plan of 1980 identified Desert Wildlife Management Areas (DWMAs) which were also identified as Areas of Critical Environmental Concern (ACEC). In these areas, recovery of the threatened desert tortoise is a primary goal. New ground disturbance is limited to 1% of the public land area within these DWMAs, and solar power plant applications are not being accepted within those boundaries. New ground disturbance is similarly limited to 1% of the public lands in Mohave ground squirrel Habitat Conservation Areas (MGSCA) in an effort to prevent listing of the species. An important aspect of the context for the 1% surface disturbance criterion is that the life of the plan is 30 years, and a solar energy project may consume all or a large portion of the allowable acreage limitation. If applications are submitted in these areas, despite cautions by BLM to the applicant on the difficulty of siting a project in there areas, the applications may be denied based on the 1% surface disturbance limitation and other factors, e.g., high populations of the species in the area where the project is proposed. Various factors should be taken into account to determine whether the surface disturbance proposed by an applicant for a solar energy generation facility (or any other proposed use of public lands) is in conformance with the land use plan. Non-conformance with a land use plan could be a basis for rejection of a proposal before a site-specific analysis under NEPA (including public participation) is completed. For other special status species, e.g., flat-tailed horned lizard (FTHL), there may be interagency agreements or strategies that provide important contexts for managing the public lands occupied by those species.

4) Travel Management and Access: If a right-of-way is approved for a facility as large as a solar power generation facility, the facility may block access or use of previously used routes that were designated open through BLM's route designation process. These types of impacts will be considered in the decisionmaking process on the project. The public may raise concerns about the loss of access. When a route, which is an important transportation route across an area that may be occupied by a solar power generation facility, is occupied or blocked by a constructed facility, it may be appropriate to seek opportunities to designate a different route that provides similar access across the area. In some cases, these access concerns may be associated with the needs of Federal, State or local government to ensure that they can continue to carry out their responsibilities for search and rescue, fire protection, public safety and law enforcement. The potentially lost access may also relate to access for the general public for transportation routes across the project site area or to continue to enjoy recreation opportunities on public lands in the vicinity of the project.

5) Off-highway Vehicle Open Areas: The CDCA plan established OHV open areas (play areas) to provide opportunities for off-highway vehicle recreation with a minimum of restrictions. In these areas, cross-country travel off designated open routes is allowed for motorized vehicle users not engaged in competitive or commercial events. While open OHV areas, and the Multiple use class (MUC) guidelines for the areas in which they are located (Class I), were designed to provide opportunities for off-highway vehicle recreation, these areas were not set aside for the exclusive use of motorized vehicle recreation users. The lands are open to other uses, including potentially the granting of rights-of-way.

However, in the process of evaluating proposals for other uses, such as proposals for alternative energy generation (solar, wind, geothermal, etc.), the conflict between these other uses and recreation users in the OHV open area must be given careful consideration. If a right-of-way for an energy generation project is approved in an OHV open area it would effectively reduce the size of the open area designated in the land use plan. A reduction in the size of the open area due to an energy generation project is an important consideration. The use of OHVs for various types of recreation has increased since the CDCA plan was approved (1980) and open areas were designated. Since that time, the acreage of public land available for OHV use has declined for a variety of reasons, including wilderness designation, expansion of National Park units, and designation or areas with a high priority for species protection.

6) Cumulative Impacts: Cumulative impact in the Council on Environmental Quality's regulations implementing NEPA (40 CFR 1508.7) ***"****is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."* The projects to be analyzed as part of cumulative impacts do not have to be related or connected to the project being analyzed site-specifically. The requirement to address cumulative impacts for solar energy projects is complicated by the fact that there are numerous projects at different stages of being proposed on public and private lands. The cumulative impact of several solar energy generation projects on public lands in southern California is a concern that must be addressed. However, when an environmental document is prepared on an individual project, it is impossible to predict which of the other projects being contemplated by other project applicants will be approved by responsible federal, State, or local government agencies, or even proceed to a point where an environmental document is prepared on the project. Therefore, cumulative impacts must be addressed using some type of reasonably foreseeable development scenario. The reasonably foreseeable development scenario should be developed using an "areawide" approach selected specifically for the individual project and surrounding area. The appropriate land area to cover in analyzing cumulative impacts may vary by resource. Analysis of cumulative impacts based on a bioregion may be an appropriate context. (see section "L. Transmission Infrastructure" in this guidance.)

Other factors to consider in developing a reasonably foreseeable development scenario and analyzing cumulative impacts are: (1) Federal and State goals for renewable energy development (including goals for renewable energy generation from public lands); (2) long-term plans of the transmission system operators (and the California Independent System Operator regulatory functions); (3) power purchase agreements, (4) transmission-related studies required by California Independent System Operator, etc.

7) Acquired Lands: Lands and interests in lands acquired pursuant to Sec. 205 of FLPMA "become public lands...and shall remain public lands" accordingly to Sec. 205(c). Lands that were acquired, either by purchase or donation may be considered for issuing a

right-of-way for solar energy development if there are no restrictions on the Grant Deed. Acquired lands are not open to entry. Some acquired lands were acquired with deed restrictions or other encumbrances. These acquired lands should be identified and analyzed in the decision making process.

Acquired lands with no encumbrances are generally subject to management prescriptions similar to those on surrounding public lands. Thus, the lands may be open to discretionary issuance of rights-of-way based on an appropriate level of environmental document (EA or EIS) for the discretionary activity proposed, in this case renewable energy development. A plan amendment would be needed to designate the lands to be consistent with the surrounding public lands. Designating the acquired lands to match the surrounding public lands may be useful during the life of the project and administration of the right-of-way. Since a plan amendment is needed to authorize a solar energy generation right-of-way in the CDCA, the plan amendment to designate any such acquired lands could be accomplished at that time.

Acquired lands potentially affected by a proposed project must be identified by the realty specialist, along with any restrictions/encumbrances that could affect subsequent authorizations by BLM on those lands. The acquired lands and any deed restrictions, along with how the lands were acquired and when must be identified in environmental documents that support the decision on the right-of-way grant. If the lands acquired are located in threatened and endangered species habitat, there will generally be a need to compensate for the surface disturbance associated with the right-of-way (solar energy generation facility).

8) Energy/Utility Corridors: The Goals of the Energy Production and Utility Corridors Element of the CDCA Plan (1980) are:

(a) To establish a network of joint-use planning corridors capable of meeting projected utility service needs to the year 2000.
(b) To identify and establish future communication-site locations and to establish powerplant sites.
(c) To establish and identify potential geothermal and wind siting regions.

The goal specific to the year 2000 has not been updated through a CDCA plan amendment. However, the intent of establishing the corridors as "…a network of joint-use planning corridors capable of meeting projected utility service needs…" continues as the purpose of the corridors established in the CDCA plan and through the Westwide Energy Corridor EIS. BLM has received some right-of-way applications for solar energy power generation projects that are located either partially or wholly within designated corridors. If BLM were to approve such a project, it could (based on the site-specific considerations) result in a situation where the ability of the corridor to serve as a "joint use" corridor in future years may be substantially diminished.

The need for joint-use corridors includes transmitting electric power from new renewable energy generation projects to load centers. Both renewable energy generation projects and the

transmission infrastructure to carry the electric power to load centers are critical to meeting current and future goals of generating more electric power from renewable sources.

When all or part of a proposed project is in a utility corridor (either a CDCA corridor designated in the CDCA Plan or a corridor that may be designated under Section 368 of the Energy Policy Act through the Westwide Energy Corridor EIS), BLM should alert applicants of this potential conflict early in the process of reviewing their application. BLM should explain to them what they can expect BLM to consider during the application process. The conflict between a proposed project and a designated utility corridor can generally be identified when an application is initially submitted and before an applicant submits a complete Plan of Development (POD). This would help the applicant to submit a POD that eliminates all or most of the conflict between their proposed project and a utility corridor.

When all or part of a proposed renewable energy project is located in a designated utility corridor, the impacts of occupying the utility corridor should be analyzed, along with alternatives that would help mitigate the impacts to the utility corridor. The California Desert Conservation Area plan does not contain a decision that would enable BLM to deny such an application without a site-specific analysis to support such a decision. The EIS prepared for a proposed solar energy project should analyze the impact the project would have on the ability of the utility corridor to serve its intended purpose, i.e., would the corridor continue to retain the capacity to site additional utilities in the corridor or would the project so constrain the available land within the corridor that it would limit the corridor's ability to locate additional linear facilities, e.g., transmission lines, pipelines, etc.? If future uses of the corridor would be constrained by the proposed project, the project may need to be redesigned to minimize or eliminate the conflict. Should a proposed action be likely to substantially diminish the intended purposes of a corridor, the proponent should consider, or BLM may require, redesigning the project to mitigate the impact. If the project cannot be redesigned to eliminate the conflict, BLM should alert the applicant that BLM would work with the applicant to develop an alternative (for inclusion in the EIS) that would mitigate the adverse effects to the utility corridor. Potential alternatives to be analyzed in the EIS could include expansion of the designated width of the existing utility corridor, AND/OR, designation of a new energy/utility corridor. An expanded or new utility corridor would require an amendment to the California Desert Conservation Area Plan. However, if the analysis demonstrates that the impacts of a modified or new utility corridor are not acceptable to BLM, and the proposed solar energy project cannot be modified to mitigate the impacts to the utility corridor, BLM continues to retain the option to deny the solar energy project.